

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition
for Reinstatement of Revoked
Certificate:

)
) OAH No. N-9610156
)
)

JOHN ALLEN BAUGHMAN, M.D.
2154 Southridge
Palm Springs, California 92264

)
) Physician's and Surgeon's
) Certificate No. A28422
)
)

)
) Petitioner.
)
)

DECISION

The attached Proposed Decision of the Administrative Law
Judge is hereby adopted by the Medical Board of California as its
Decision in the above-entitled matter.

This Decision shall become effective on March 3, 1997.

IT IS SO ORDERED January 31, 1997.

L. Hubbell

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Certificate No. A28422)	
)	
Petitioner.)	
_____)	

PROPOSED DECISION

This matter came on regularly for hearing before Administrative Law Judge Jaime René Román, Medical Quality Hearing Panel, Office of Administrative Hearings, on December 19, 1996, in Oakland, California.

Petitioner John Allen Baughman, M.D. (hereinafter "petitioner") appeared and was represented by Bruce J. Lance, Jr. Attorney At Law.

Jane Zack Simon, Deputy Attorney General, Health Quality Enforcement Section, represented respondent Medical Board of California (hereinafter "the Board").

Evidence was presented and the matter submitted on December 19, 1996.

FINDINGS OF FACT

Jurisdictional Findings

I

On March 21, 1975, the Board issued Physician's and Surgeon's Certificate No. A28422 to petitioner.

II

On April 13, 1992, effective May 13, 1992, the Board revoked petitioner's certificate.

III

Petitioner, by Petition for Reinstatement of Revoked Certificate dated April 24, 1996, seeks Board licensure.

Factual Findings

IV

The facts and circumstances underlying the discipline referenced in Finding No. II are as follows:

- A. On November 30, 1987, petitioner, while working as an Emergency Room physician at Weed Army Hospital, exposed his erect penis to a female nurse working with him.
- B. While his penis was exposed and observed by the nurse as referenced in Finding No. IV.A, petitioner made reference to a box of popcorn and a penis at a movie theater and asked her if she had ever had a "wild hair." The nurse reported petitioner to the hospital Credentials Committee which conducted a hearing and suspended petitioner's privileges for a period of 90 days.

V

Petitioner, 65 years old, has established his partial rehabilitation.

- A. He was candid and expressed particular insight into professional impropriety.
- B. Petitioner, reputed among his professional colleagues as wont to relate "off color" jokes or possessed of a character towards ribald humor, has learned the gravity of failing to exercise appropriate circumspection.
- C. Notwithstanding his reputation as referenced in Finding No. V.B, petitioner's jocular conduct was limited to staff and never extended to patients.
- D. But for the incident referenced in Finding No. V.B and the discipline imposed as referenced in Finding Nos. II and IV.B, petitioner has never engaged in conduct warranting discipline.

- E. Petitioner's post-misconduct behavior involved no impropriety or violation of the Medical Practice Act.¹ Petitioner, having failed to appropriately respond to the Accusation underlying the discipline referenced in Finding No. II, was procedurally barred from presenting evidence of mitigation, rehabilitation or extenuation to the Board of facts underlying the conduct referenced in Finding No. IV.
- F. Petitioner, as a consequence of the Board's action as set forth in Finding No. II, has become:
1. Reflective and increasingly sensitive of persons and their feelings.
 2. Closer to his wife of over two decades.
 3. More spiritual and humble.
- G. Petitioner will abide by terms and conditions imposed by the Board incident to relicensure as a physician and surgeon.
- H. The incident (Finding No. IV) giving rise to the discipline herein (Finding No. II) occurred over nine years ago and involved no sexual gratification.

VI

Petitioner, expresses, without seeking to excuse the conduct referenced in Finding No. IV, appropriate remorse and comprehension of the professional obligations and responsibilities imposed on a physician and surgeon.

X

Petitioner, not having practiced medicine for over 4½ years, has devoted significant time and energy to maintaining his professional education and has the support of professional colleagues and his wife.

¹ A long period of postmisconduct practice without further discipline is a significant mitigating circumstance. In the Matter of Respondent K (1993) 2 Cal. State Bar Ct. Rptr. 335.

XI

The conduct (Finding No. IV) giving rise to the discipline (Finding No. II) of petitioner's certificate (Finding No. I) involved no issue relating to quality of patient care.

DETERMINATION OF ISSUES

Petitioner, pursuant to Business and Professions Code §§2229 and 2307 and Finding Nos. V - XI, has made a satisfactory showing that with due consideration for the public safety, it would not be contrary to the public interest to grant a properly conditioned² certificate as a physician and surgeon.³

ORDER

The petition of petitioner John A. Baughman, M.D., (Certificate No. A28422) for the reinstatement of his revoked certificate is granted on the following terms and conditions:

1. Petitioner's certificate shall be immediately issued and revoked, the order of revocation stayed, and the license placed on probation for a period of three (3) years upon payment to the Medical Board of California of all applicable fees and successful passage of an oral clinical examination in a subject designated and administered, at petitioner's expense, by the Division of Medical Quality or its designee.

- A. The oral clinical examination shall be taken within ninety (90) days after the effective date of this Decision. If he fails the first examination, petitioner shall be allowed to

² Although petitioner's counsel has argued that petitioner should be granted an unrestricted certificate, the underlying conduct (Finding No. IV) and period since petitioner's certificate has been revoked (Finding No. II) compels the imposition of a period of probation with appropriate terms and conditions. In exercising disciplinary authority, an Administrative Law Judge of the Medical Quality Hearing Panel is mandated to "take action that is calculated to aid in the rehabilitation of the licensee, or where, due to a lack of continuing education or other reasons, restriction on scope of practice is indicated, to order restrictions as are indicated by the evidence." Business and Professions Code §2229(b).

³ Respondent's counsel is to be commended for her acknowledgement of petitioner's rehabilitative efforts and acquiescence to the petition's prayer.

take and pass a second examination, which may consist of a written as well as an oral examination. The waiting period between the first and second examinations shall be at least three (3) months. If petitioner fails to pass the first and second examinations, he may take a third and final examination after waiting a period of one year. Petitioner shall not practice medicine until he has passed the required examination and has been so notified by the Division or its designee in writing. This prohibition shall not bar petitioner from practicing in a clinical training program approved by the Division or its designee. Petitioner's practice of medicine shall be restricted only to that which is required by the approved training program.

- B. Failure to pass the oral clinical examination within eighteen (18) months of the effective date of this Decision shall vacate the order granting the petition for the reinstatement of his revoked certificate; whereupon petitioner shall, at his expense, file a new Petition for Reinstatement of Revoked Certificate.
- 2. Petitioner shall provide the Division of Medical Quality, or its designee, proof of service that he has served a true copy of this Decision on the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to petitioner or where petitioner is employed to practice medicine and on the Chief Executive Officer at every insurance carrier where malpractice coverage is extended to petitioner.
- 3. Within sixty (60) days of the effective date of this Decision, petitioner shall enroll in a course in sexual harassment and in a course in ethics, approved in advance by the Division of Medical Quality or its designee, and shall successfully complete each course during the first year of probation.
- 4. Within thirty (30) days of the effective date of this Decision, and on a periodic basis thereafter as may be required by the Division of Medical Quality or its designee, petitioner, at his expense, shall undergo a psychiatric evaluation (and psychological testing, if deemed necessary) by a Division-appointed psychiatrist, who shall


furnish an evaluation report to the Division or its designee. If petitioner is required by the Division or its designee to undergo psychiatric treatment, petitioner shall within thirty (30) days of the requirement notice submit to the Division for its prior approval the name and qualifications of a psychiatrist of petitioner's choice. Petitioner shall undergo and continue psychiatric treatment until further notice from the Division or its designee. Petitioner shall have the treating psychiatrist submit quarterly status reports to the Division or its designee.

5. Petitioner shall obey all federal, state and local laws, and all rules governing the practice of medicine in California, and remain in full compliance with any court ordered criminal probation, payments and other orders.
6. Petitioner shall submit quarterly declarations under penalty of perjury on forms provided by the Division of Medical Quality, stating whether there has been compliance with all the conditions of probation.
7. Petitioner shall comply with the Division of Medical Quality's probation surveillance program. Petitioner shall, at all times, keep the Division informed of his addresses of business and residence which shall both serve as addresses of record. Changes of such addresses shall be immediately communicated in writing to the Division. Under no circumstances shall a post office box serve as an address of record.
8. Petitioner shall, at his expense, appear in person for interviews with the Division of Medical Quality, its designee or its designated physician(s) upon request at various intervals and with reasonable notice.
9. Petitioner is ordered to reimburse the Division of Medical Quality the reasonable monthly costs incurred in the administration of probation herein.
10. In the event petitioner is absent from or should leave California to practice outside the State or for any reason should petitioner cease practicing medicine in California, he shall notify the Division of Medical Quality or its designee in writing within ten (10) days of the dates of departure and return or the dates of non-practice

within California. Non-practice is defined as any period of time exceeding thirty (30) days in which respondent is not engaged in any activities defined in sections 2051 and 2052 of the Business and Professions Code. Periods of non-practice, as defined in this condition, will not apply to the reduction of the probationary period.

11. Upon successful completion of probation, petitioner's certificate will be fully restored.
12. If petitioner violates probation in any respect, the Division of Medical Quality, after giving petitioner notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation or Petition to Revoke Probation is filed against petitioner during probation, the Division shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.
13. Petitioner may petition for modification or termination of probation upon:
 - A. The passage of no less than eighteen (18) months from the effective date of this Decision,
 - B. Full compliance with the terms and conditions of probation, and
 - C. Payment in full of all fees and costs.

Dated: December 26, 1996


JAIME RENÉ ROMÁN
Administrative Law Judge
Medical Quality Hearing Panel
Office of Administrative Hearings